IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

Prakash Chandra v. Smt.Basanti & Anr.

S.B.CIVIL REGULAR FIRST APPEAL NO.86/1996
u/S.96 CPC against the judgment and decree dated 11.12.1995 passed by District Judge, Dungarpur in Civil Original Suit No.23/1985.

DATE OF JUDGMENT : 13th January, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Mehta, for the appellant.
Mr. Anuj Sahlot for Mr.Mridul Jain, for the respondents.

BY THE COURT :

This civil regular first appeal is preferred by plaintiff assailing validity and propriety of judgment and decree dated 11.12.1995 whereby learned District Judge, Dungarpur rejected the suit for recovery of money.

The facts necessary for adjudication of appeal, as mentioned in the plaint, are that appellant plaintiff purchased a truck with partnership of Shri Gamera (defendant). For the purpose of purchase of truck plaintiff as well as defendant both were required to include equal share of purchasing amount. Defendant Gamera was not having money at the relevant time, therefore, the plaintiff paid the sum of Rs.61,501/- as a part money required to be paid by Gamera to Rehman Bhai from whom the truck was said to be purchased. It is further stated in the plaint that Shri Gamera

(defendant) executed the bond on 5.11.1982 in favour of the appellant stating therein that the amount of Rs.61,501/- was paid to Rehman Bhai by plaintiff Prakash Chandra on behalf of defendant and, therefore, defendant shall be liable for repayment of money to plaintiff Prakash Chandra.

A written statement was filed on behalf of defendant denying all the allegations. However, it was stated that the truck was purchased by Gamera at his own at the cost of Rs.75,000/- and for this purpose one Shri Banshilal financed a sum of Rs.50,000/- to him. The defendant stated in the written statement that the bond dated 5.11.1982 was never executed by him and the same is a forged document.

On basis of pleadings following five issues were framed by the trial court:-

> "1.Whether the suit document is a bond. Hence in sufficiently stamped consequently in admissible in evidence?
>
> 2. Whether, the Deft.executed the suit document in circumstances mentioned in para 1 to 5 plaint. If so to what effect?
>
> 3. Whether Deft. Agreed to pay ..... 1% P.M. pleaded in para 6 plaint. ? And liable to pay ..... to the Tune of 23735?
>
> 4. Whether the Deft. Is not liable to pay the suit amount as pleaded in para 8 & 14 W.S. ?
>
> 5. Relief.

The issue No.1 was decided in favour of the plaintiff on the count that document Ex.P/5 was treated as a bond by order of the court dated

8.1.1987 and the same was made admissible in evidence by depositing requisite penalty. The issue No.2 was decided by the court below against the plaintiff holding that the evidence placed to prove the suit was not trustworthy and whatever evidence produced is not sufficient to decree the suit.

During the pendency of suit defendant Gamera died and, therefore, his legal representatives viz. Smt. Basanti and Smt. Radha were substituted as defendants. The present appeal is preferred by the plaintiff appellant assailing validity and propriety of judgment dated 11.12.1995.

I have heard counsel for the parties.

The contention of the counsel for the appellant is that the court below failed to appreciate the evidence available on record in just and proper manner. According to the appellant the bond executed between the parties was sufficiently proved on basis of the evidence and, therefore, there was no reason for not decreeing the suit as prayed.

I have gone through the evidence available on record.

PW-1 is the plaintiff himself. The plaintiff in his statement stated that the amount of Rs.61,501/- was paid to the defendant. He further states that the aforesaid amount was paid to the truck owner on different dates and the receipts in

this regard were given by the truck owner. He has further stated that on 5.7.1989 a sum of Rs.31,501/- was given to Shri Rehman Bhai, receipt of which is on record as Ex.1. The amount of Rs.5,000/- in cash and Rs.5,000/- by cheque was paid to Jamal Bhai, receipt of which is Ex.2. He also states that sum of Rs.10,000/- and a sum of Rs.7,500/- was paid by him to Musa bhai who happens to be nephew of Rehman Bhai. He has further stated that the bond Ex.5 was written by Shri Julfikar Ali, document writer. It is pertinent to note that in cross examination he has specifically stated that his brother and his wife entered into the agreement with Gamera. He was not a party to this agreement but the agreement arrived between the parties in his presence. From threadbare reading of statements given by plaintiff Shri Prakash Chandra it is clear that he lacks consistency. Whatever stand taken by him is contradictory to his own statements and even to the pleadings. His entire case is that he was partner with defendant Gamera in purchasing a truck but at the same time in his statement he has stated that the agreement was between defendant Gamera and his brother and his wife.

The another witness Shri Imtiaz Ali verified the signatures of Shri Julfikar Ali on Ex.5, the bond. Shri Imtiaz Ali in cross examination stated that he was not living with his father from the period of 20 years. He also stated that he was living with his mother to whom divorce was given by Shri Julfikar Ali. The statements of Shri Imtiaz Ali are also not trustworthy as it is not at all

believable that a person who was not living with his father for period of about 20 years can identify his signatures just by seeing the same for a moment. It is also relevant to note that third person Shri Bal Mukund who was said to be a witness while executing the bond has not been produced by the plaintiff to support the suit. Per contra the defence witnesses sufficiently proved the circumstances in which the truck was purchased by Shri Gamera by availing finance from Shri Banshilal.

I am of the considered opinion that in view of the reasons stated above the trial court rightly held that the statement given by plaintiff Prakash Chandra and Shri Julfikar Ali does not bear any confidence and, therefore, the same are not trustworthy.

The appeal, therefore, deserves to be dismissed. Hence the appeal is dismissed. The parties are required to bear their own costs.

(GOVIND MATHUR),J.

KKM/PS.